

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, YOUNGSTOWN**

IN RE: EAST PALESTINE TRAIN DERAILMENT

CASE NO. 4:23-CV-00242-BYP
JUDGE BENITA Y. PEARSON

**JOINT MOTION REGARDING PLAINTIFFS' PROPOSED FIRST AMENDED
MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

Respectfully, Plaintiffs and Norfolk Southern Defendants (collectively, the Parties) jointly move the Court to enter an Order regarding Plaintiffs' proposed First Amended Master Consolidated Class Action Complaint and related matters. In support of this Joint Motion, the Parties state:

1. On May 4, 2023, Plaintiffs filed their Master Consolidated Class Action Complaint. Dkt. 31.
2. Pursuant to the schedule set by the Court, Norfolk Southern Defendants responded to that complaint by filing a Motion to Dismiss and to Strike (Dkt. 76), which was fully briefed (Dkts. 103, 112) as of July 14, 2023, and is pending the Court's resolution.
3. The Court's current Case Management Conference Order and Plan includes a deadline of August 18, 2023 "to amend pleadings and add parties." Dkt. 98 at ¶17.
4. On August 6, 2023, Plaintiffs sent to Norfolk Southern Defendants their proposed First Amended Master Consolidated Class Action Complaint ("First Amended Complaint"), which names as additional defendants the four parties that Norfolk Southern Defendants named as third-party defendants in their Third-Party Complaint (Dkt. 119): Oxy Vinyls LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company

(collectively, the “Railcar Defendants” here).^{*} Plaintiffs’ proposed amendments to the Class Action Complaint are limited to factual allegations concerning the Railcar Defendants and causes of action for negligence, gross negligence, and medical monitoring against the Railcar Defendants. As a result of adding additional defendants, the allegations of Plaintiffs’ proposed First Amended Complaint also refer to the actions of the Railcar Defendants, in combination with the alleged acts and omissions of the Norfolk Southern Defendants, as proximately causing or contributing to the derailment and subsequent release of hazardous materials. Plaintiffs’ proposed First Amended Complaint seeks judgment against the Railcar Defendants and Norfolk Southern Defendants, including jointly and severally as allegedly warranted.

5. Plaintiffs contend that amendment is proper under Rule 15(a) of the Federal Rules of Civil Procedure. There is no undue delay, as the proposed First Amended Complaint is timely under the Court’s Case Management Conference Order and Plan. Also, Plaintiffs are amending their complaint shortly after learning of new facts and evidence regarding the Railcar Defendants, which came to light during the recent National Traffic and Safety Board (NTSB) public hearings. The proposed amendment is not futile as the complaint amply explains the Railcar Defendants’ liability, and Norfolk Southern Defendants have already joined Railcar Defendants as Third-Party Defendants.

6. Subject to the proposed terms stated below in this Joint Motion, pursuant to Rule 15(a)(2), Norfolk Southern Defendants consent to Plaintiffs’ filing of the proposed First Amended Complaint.

^{*} Plaintiffs’ First Amended Master Class Action Complaint is attached hereto as Exhibit 1. For the Court’s convenience, a redline version of Plaintiffs’ First Amended Master Consolidated Complaint is attached hereto as Exhibit 2.

7. The Parties agree that nothing in Plaintiffs' proposed First Amended Complaint affects or alters the pending Motion to Dismiss and to Strike (Dkt. 76).

8. The Parties jointly propose that, because of the limited scope of the new allegations in the proposed First Amended Complaint, the pending Motion to Dismiss and to Strike briefing (Dkts. 76, 103, 112) would apply fully to Plaintiffs' proposed First Amended Complaint, and it would be more efficient and would serve the interests of judicial economy if Norfolk Southern Defendants are not required to re-file or re-brief their pending Motion to Dismiss and to Strike. *See Campinha-Bacote v. Hudson*, 627 F. App'x 508, 510 (6th Cir. 2015) ("a court may consider the original motion as addressing the new pleading" (citing Wright, Miller & Kane, 6 *Fed. Prac. & Proc.* § 1476 (2d ed.); *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499-500 (S.D. Ohio 2002)); *see also Sealey v. Johanson*, 2016 WL 1273882, at *1 (S.D. Miss. Mar. 29, 2016) (based on party stipulation and in the interest of judicial economy, construing prior motion to dismiss as applicable to amended pleading).

9. Norfolk Southern Defendants request and Plaintiffs' consent to, subject to the Court's agreement, that Norfolk Southern Defendants' answer to the proposed First Amended Complaint be due either (a) 21 days after the Court rules on the pending Motion to Dismiss and to Strike, or (b) 21 days after the Court allows the amendment, whichever is later.

Dated: August 9, 2023

Respectfully submitted by:

Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2023, a copy of foregoing was filed electronically.
Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Michelle L. Kranz

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